

Message Text

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TO AMEMBASSY KINGSTON PRIORITY

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EXDIS

E.O. 11652: GDS

TAGS: EFIN, EIND, EMIN, US, JA

SUBJ: BAUXITE NEGOTIATIONS

REF: (A) KINGSTON 939 (B) KINGSTON 940

(C) KINGSTON 946 (D) KINGSTON 990

1. DEPARTMENT APPRECIATES PROMPT AND THOROUGH EMBASSY
REPORTING AND ANALYSIS.

2. IN ANALYZING JAMAICAN PROPOSALS DEPT. (IN CONSULTATION
WITH TREASURY) HAS FOUND SEVERAL APPARENT INCONSISTENCIES
AND WOULD APPRECIATE EMBASSY'S THOUGHTS ON THEM. EMBASSY
SHOULD NOT RPT NOT APPROACH GOJ ON THESE TOPICS AT THIS
TIME.

3. TAXATION:

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(A) REF A, PARAS 2A(1)-2A(3): ALL THREE PROPOSED TAXES

(INCOME TAX, ROYALTY, AND NEW PRODUCTION LEVY) APPEAR TO BE APPLIED TO SAME TAX BASE, PHYSICAL TONNAGE OF BAUXITE, WITH RATES DEPENDING ON WHETHER BAUXITE IS OR IS NOT PROCESSED IN JAMAICA. ONLY EXCEPTION WOULD BE THAT USUAL-TYPE INCOME TAX (DEPENDING ON DEEMED PROFIT) WOULD CONTINUE TO BE APPLIED ON INTEGRATED OPERATION OF BAUXITE EXTRACTION AND PROCESSING INTO

ALUMINA, THUS PROPOSED INCOME TAX PARA 2(A)1 WOULD APPLY ONLY TO UNPROCESSED BAUXITE EXPORTED. DO THESE INTERPRETATIONS ACCORD WITH EMB UNDERSTANDING?

(B) PRESENT CONCESSION AGREEMENTS STIPULATE PROVISIONAL METHOD AND FINAL METHOD FOR ASCERTAINING COMPANIES' JAMAICAN TAX LIABILITY. FOR PROVISIONAL (CASH-FLOW) PURPOSES, GOJ APPLIES 45 PERCENT INCOME TAX RATE TO "ASSUMED PROFIT" OF ABOUT US DOLLARS 5.00 PER LONG DRY TON OF BAUXITE. CONCESSION AGREEMENTS PROVIDE THAT FINAL LIABILITY BE DETERMINED (AND LIMITED) BY AMOUNT OF US TAX CREDITS, WHICH DEPENDS PARTLY ON BAUXITE TRANSFER PRICE. TAX AUDIT SCHEDULE HAS POSTPONED FINAL ADJUSTMENT OF GOJ TAXES FOR RECENT YEARS. RE REF A, PARA 2(A)1, DOES EMB THINK STATEMENT THAT "ANY SPECIAL ARRANGEMENTS RELATING TO INCOME TAX RATES UNDER PREVIOUS AGREEMENTS WILL CEASE" MEANS THAT TAX ON ASSUMED PROFIT PER TON WOULD BECOME FINAL LIABILITY, INSTEAD OF FINAL LIABILITY BEING CONDITIONAL ON US TAX CREDITS? IF SO, BAUXITE TRANSFER PRICE WOULD APPEAR NO LONGER TO HAVE ANY RELEVANCE FOR JAMAICAN TAX LIABILITY, BUT ONLY FOR US LIABILITY. ALSO, UNDER PROPOSED FINAL METHOD

-WOULD GOJ INCOME TAX RATE REMAIN AT 45 PERCENT?

-WOULD GOJ DROP "ESCALATION FEATURES" AS APPLIED TO DEEMED PROFIT (I.E. PROVISIONS THAT JAMAICAN INCOME TAX LIABILITY DEPENDS ON PUBLISHED PRICES OF ALUMINUM INGOTS IN US)?

C. REF. A, PARAS 2A(1)-2A(3): ARE GOJ TAX PROPOSALS INTENDED TO PROVIDE TAX INCENTIVE TO ADD MORE ALUMINA
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PROCESSING CAPACITY IN JAMAICA, OR TO INCREASE EXTRACTION OF JAMAICAN BAUXITE? WE HAD THOUGHT BOTH OF THESE WERE GOJ OBJECTIVES, BUT PROPOSED TAXES SEEM TO OFFER DISINCENTIVES TO COMPANIES TO DO EITHER. RELATIVE TAX BURDENS PER TON OF BAUXITE (ASSUME ALL TAXES, INCLUDING DOLLARS 14.00 PRODUCTION LEVY, APPLY TO TONS OF BAUXITE RATHER THAN ALUMINA) EXPORTED IN UNPROCESSED STATE, AND BAUXITE PROCESSED IN JAMAICA AND EXPORTED AS ALUMINA, ARE

(J DOLLARS PER TON)

TAX	AS UNPROCESSED	AS ALUMINA
PRODN. LEVY	10.00	14.00
ROYALTY	2.00	1.00
TOTAL	12.00	15.00

ADDED TO THESE TAX BURDENS ARE INCOME TAX BURDENS, FOR
 ADDED TO THESE TAX BURDENS ARE INCOME TAX BURDENS, FOR
 WHICH PRECISE COMPARABLE FIGURES CANNOT BE SUGGESTED.
 FOR UNPROCESSED BAUXITE EXPORTS, INCOME TAX WOULD BE
 US DOLLARS 2.25 PER TON. FOR BAUXITE PROCESSED INTO
 ALUMINA, AS POINTED OUT ABOVE, USUAL-TYPE INCOME TAX IS
 LEVIED ON INCOME OF INTEGRATED EXTRACTION AND PROCESSING
 OPERATION, AND THUS A PER TON ESTIMATE CANNOT BE MADE IN
 ADVANCE. THEREFORE, THE GENERAL IMPRESSION OF TOTAL
 TAX STRUCTURE PROPOSED IS THAT:

-BECAUSE OF RELATIVE PRODUCTION LEVY BURDEN, TOTAL TAX
 STRUCTURE APPEARS TO FAVOR FOREIGN PROCESSING (TO THE
 TUNE OF J DOLLARS 3.00 PER TON OF BAUXITE PLUS THE
 OFFSETTING OR REINFORCING EFFECT OF RELATIVE INCOME
 TAX BURDEN, AND

-AT PRESENT GOJ INCOME TAX RATES AND ROYALTY LEVELS
 (30-40 CENTS PER TON OF BAUXITE), PROPOSED GOJ REVENUE
 MEASURES WOULD INCREASE GOJ TAX REVENUE PER TON OF
 BAUXITE BY FOUR-TO-FIVE-FOLD.

FURTHERMORE, REGARDLESS OF HOW ONE LOOKS AT PROPOSED
 TAX STRUCTURE, THERE SEEM TO BE NO TAX INCENTIVES TO
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EXPAND BAUXITE EXTRACTION IN JAMAICA IN ORDER TO INCREASE
 JAMAICA'S SHARE IN WORLD MARKET - ONLY DISINCENTIVES ARE
 APPARENT. GOJ'S INTENTION IN PARA 2A(5) MAY BE TO COUNTER-
 ACT SUCH DISINCENTIVES BY ESTABLISHING YEARLY MINIMUM
 TONNAGES FOR TAX PURPOSES. THIS WOULD CERTAINLY OFFER A
 (STICK-RATHER-THAN-CARROT) INCENTIVE TO INCREASE
 PRODUCTION IF GOJ RAISES YEARLY MINIMUM OVER TIME, AS
 WOULD SEEM LIKELY.

HOW DO FOREGOING INFERENCES SQUARE WITH EMBASSY'S?

D) REF A, PARA 2A(4): WOULD REVOCATION OF DEPLETION
 ALLOWANCE QUALIFY COMPANIES FOR INCOME TAX ALLOWANCES NOT
 NOW ALLOWED, OR ARE BOTH ALLOWED NOW? SINCE ALUMINA IS
 NOT A DEPLETABLE ASSET, AND CONSIDERING THAT DEPLETION

ALLOWANCE APPEARS TO DROP EFFECTIVE JAMAICAN INCOME TAX RATE FROM 40 PERCENT TO 36 PERCENT (36 PERCENT IS CLOSE TO THE NOMINAL US RATE FOR WESTERN HEMISPHERE TRADING CORPORATIONS) REVOCATION OF ALLOWANCE WOULD APPEAR CONSISTENT WITH GOJ'S DESIRE TO SCRAP CONCESSION AGREEMENT'S LIMIT OF JAMAICAN TAX LIABILITY TO AMOUNT OF US TAX CREDITS.

E) REF A, PARA 2A(5): ARE COMPANIES' MINIMUM TONNAGES INFLEXIBLE OR WILL PROVISIONS BE MADE FOR FORCE MAJEURE, ALUMINUM INDUSTRY SLOWDOWNS, OR ANY SITUATION

WHICH WOULD AFFECT ALUMINUM COMPANIES' NEED FOR SPECIFIC TONNAGES?

F) REF A, PARA 2A(6): ARE COMPANIES NOW EXEMPT FROM ANY WITHHOLDING TAX LIABILITY? WHAT KIND OF PAYMENTS (IF ANY) ARE COMPANIES MAKING WHICH ARE NOW SUBJECT TO WITHHOLDING AND AT WHAT RATES?

G) REF B, PARA 9.: ASSUME "DOLLARS 350 MILLION" SHOULD READ "DOLLARS 250 MILLION"; AND LINE 10, ASSUME "ALUMINA" SHOULD READ "ALUMINUM".

H) REF D, PARA 3: DO YOU THINK THAT MATALON'S CALCULATION WAS BASED ON FORMULAE OUTLINED IN REF A, CONFIDENTIAL

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PARAS 2A(1)-2A(3), FROM WHICH HE WORKED FORWARD TO OBTAIN ALUMINUM PRICE OF 35 CENTS PER POUND? OR DID HE START WITH LATTER FIGURE AND WORK BACKWARD TO GET DOLLARS 170 MILLION, USING THE SAME FORMULA OR OTHER FORMULAE? OF COURSE, ANY SUCH GOJ
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